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ORDINANCE NUMBER O- **19930** (NEW SERIES)

DATE OF FINAL PASSAGE FEB 26 2010

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 26, SECTIONS 61.2601 THROUGH 61.2619 ALL RELATING TO THE CREATION OF THE CITY'S RENEWABLE ENERGY, ENERGY EFFICIENCY AND WATER CONSERVATION IMPROVEMENTS, AND EQUIPMENT FINANCING PROGRAM.

WHEREAS, the installation of distributed generation renewable energy sources, energy efficiency improvements and equipment, and water conservation improvements and equipment on private property in the City is in the public interest; and in furtherance of the public health, safety, and general welfare in that such installation will help conserve valuable natural resources and address the issue of global climate change; and

WHEREAS, the City desires to facilitate the installation of distributed generation renewable energy sources, energy efficiency improvements and equipment, and water conservation improvements and equipment by providing for an alternate method for the financing of such improvements and equipment through the creation of special taxing districts comprised of properties to be improved and through the issuance of bonds secured by the special taxes levied on such properties [the Program]; and

WHEREAS, the creation of special taxing districts and the issuance of bonds secured by special taxes levied on property therein is a municipal affair; and

WHEREAS, the City desires to adopt a procedure whereby property owners in the City may participate in the City's Program; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. This ordinance establishes certain procedures by which one or more property owners may vote in favor of special taxes and bonded indebtedness by submitting a written instrument in support thereof. The Council finds and declares that any such written instrument constitutes the vote of the qualified elector in favor of the matters addressed therein for purposes of the California Constitution, including Articles XIII A and XIII C.

Section 2. The Council further finds that any facilities on private property financed pursuant to the Program are a public benefit and shall constitute a “public facility” for the purposes of this Ordinance, the Act, as defined herein, and the laws related thereto.

Section 3. That Chapter 6, Article 1 of the San Diego Municipal Code is hereby amended by adding new Division 26, sections 61.2601 through 61.2619 titled “Renewable Energy, Energy Efficiency and Water Conservation Improvements, and Equipment Financing Program,” to read as follows:

**Division 26: Renewable Energy, Energy Efficiency and Water Conservation  
Improvements, and Equipment Financing Program**

**§61.2601 Citation of Division**

This Division may be cited as the Renewable Energy, Energy Efficiency and Water Conservation Improvements, and Equipment Financing Program.

**§61.2602 Purpose and Intent**

This Division is intended to facilitate the installation of distributed generation renewable energy sources, energy efficiency improvements and equipment and water conservation improvements and equipment by providing an alternate method to finance such improvements and equipment through the creation of

special taxing districts comprised of properties to be improved and through the issuance of bonds secured by the special taxes levied on such properties.

**§61.2603 Definitions**

Each word that is defined in this Division appears in the text of this Division in italicized letters. Terms defined in the *Act* but not defined in this Division have the meaning given them in the *Act*. For the purpose of this Division, the following definition shall apply:

*Act* means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with section 53311 of Part 1, Division 2, Title 5 of the California Government Code), as amended from time to time.

*Services* means, in addition to the *Services* defined in section 53317 of the *Act*, the operation and maintenance of any improvements and equipment that may be financed under this Division or the *Act*, and any related studies, testing or monitoring.

**§61.2604 Authority**

- (a) This Division is adopted pursuant to San Diego Charter section 76.1. In proceedings undertaken pursuant to this Division, which are a municipal affair, any general laws referred to in this Division are deemed incorporated in and made a part of this Division.
- (b) The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for the furnishing of public and private capital facilities, services or equipment, or the raising of revenue for these purposes. The provisions of this Division may be used instead of

or in conjunction with any other method of financing a part or all of the cost of providing the authorized kinds of public and private capital facilities and equipment and municipal services as set forth herein.

**§61. 2605      Actions and Determinations**

The Council may take any actions or make any determinations which it determines are necessary or convenient to carry out the purposes of this Division and which are not otherwise prohibited by law. Any procedure not expressly set forth in this Division but deemed necessary or convenient to carry out any of its purposes is authorized.

**§ 61.2606      Incorporation of the Mello-Roos Community Facilities Act of 1982**

The *Act* is incorporated in and made a part of this Division. Except as otherwise specifically provided for by this Division, the process for forming a special tax district, approving the rate and method of apportionment of special tax, authorizing the issuance of the bonds, and the purposes, mode and manner of levying and collecting special taxes shall be as prescribed in the *Act*. Any provision in the *Act* to the contrary notwithstanding, a district formed pursuant to this Division shall not be a separate governmental entity but rather shall be considered an area of the City within which a special tax may be levied pursuant to San Diego Charter section 76.1. Accordingly, no such district shall have its own appropriations limit.

**§61.2607      Appeals of Special Tax**

The procedures for appeals of special taxes shall be set forth in the rate and method of apportionment of special taxes which shall be attached to the resolution

of the Council establishing the special tax district, and such resolution may include other related matters such as authorizing the levy of special taxes and calling elections therein. The institution of an appeal under this Division shall be a precondition to bringing any action under section 61.2608.

**§61.2608      Limitation of Actions**

- (a)      Except as provided in section 61.2613, the validity of any special tax levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the effective date of any ordinance or resolution providing for the levy of such special tax. Thereafter, a special tax may be contested only for the purpose of challenging the accuracy of computation of the special tax, which action may be commenced only after the final determination by the City of an appeal filed pursuant to section 61.2607 and must be commenced within 30 days after such final determination. Any appeal from a final judgment in the action or proceeding shall be perfected within 30 days after the entry of judgment.
  
- (b)      Except as provided in section 61.2613, the validity of any bonds issued under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the effective date of any ordinance or resolution authorizing the issuance of such bonds. Any appeal from a final judgment in the action or proceeding shall be perfected within 30 days after the entry of judgment.

**§61.2609 Name and Nature of Districts**

The name of any district created under this Division shall be substantially as follows:

“City of San Diego Renewable Energy, Energy Efficiency, and  
Water Conservation Improvement District No. \_\_\_\_\_.”

**§61.2610 Elections**

For purposes of any election pursuant to this Division, unless otherwise waived by unanimous action of all qualified electors, the time for the conduct of the election shall be not less than thirty days or more than 120 days from the adoption of the resolution ordering such election. Any requirement of published notice, an impartial analysis of ballot propositions and ballot arguments in connection with any such election may be waived with the unanimous consent of all of the qualified electors. For purposes of any such election, the City Clerk shall be the election official responsible for conducting and canvassing such election.

**§61.2611 Authorized Improvements and Equipment**

In addition to the facilities that may be financed under the *Act*, special taxes may be levied and bonds may be issued to finance and refinance the acquisition, construction, expansion, installation and improvement of energy efficiency, water conservation, including pollution control, and renewable energy improvements and equipment with an expected useful life of five years or longer to or on real property and in buildings, whether such real property or buildings are privately or publicly owned.

**§61.2612 Authorized Services**

In proceedings under this Division to finance *Services*, the limitations set forth in the following paragraph of section 53313 of the *Act* shall not apply:

“A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services may not supplant services already available within the territory when the district was created.”

**§61.2613 Alternate Procedure for Forming Special Tax Districts**

- (a) In addition to the procedures in the *Act*, as an alternate and independent procedure for forming a special tax district, the Council may form a special tax district that initially consists solely of territory proposed for annexation to the special tax district in the future. This special tax district may be formed only:
- (1) with the condition that a parcel or parcels within that territory may be annexed to the special tax district and subjected to the special tax only,
  - (2) following an election at which the qualified elector or two-thirds or more of qualified electors of the individual parcel or parcels to be annexed vote in favor of the special tax and the bonded indebtedness, and

- (3) thereafter with the unanimous written approval of the owner or owners of such parcel or parcels at the time that such parcel or those parcels are annexed.

If the Council forms a special tax district under section 61.2613, the procedures set forth in the *Act* for the formation of a community facilities district shall apply, with the following exceptions:

- (1) The territory does not need to be included within the district at the time of formation.
- (2) The resolution of intention or the resolution of formation need not specify the rate or rates of special tax, provided that both of the following are met:
  - (A) the resolution of intention and the resolution of formation include a statement that the rate shall be established in an amount required to finance or refinance the authorized improvements and/or equipment and to pay the district's administrative expenses, and
  - (B) the maximum rate of special tax applicable to a parcel or parcels shall be specified in the election or any unanimous written approval described in section 61.2613(a)(3) relating to such parcel or parcels.
- (3) The applicable rate, method of apportionment, manner of collection of special tax, and the authorization to incur bonded indebtedness for the special tax district shall be submitted for



approval at an election held in accordance with the *Act* as modified by section 61.2610 with the qualified elector or electors being the owner or owners of the first parcels annexed to the district.

Thereafter, the applicable special tax rate and the bonded indebtedness for the special tax district shall be approved by the unanimous written approval of the owner or owners of each parcel or parcels at the time that such parcel or parcels are annexed to the special tax district. No additional hearings or procedures are required, and such unanimous written approval shall be deemed to constitute a unanimous vote in favor of the authorization to levy the special tax on such parcel or parcels and the authorization to incur bonded indebtedness for the special tax district.

- (4) If fifty percent or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be annexed to the special tax district in the future, or if the owners of one half or more of the area of land proposed to be annexed in the future and not exempt from the special tax file written protests against establishment of the special tax district and the protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to form the special tax district shall be undertaken for a period of one year from the date of decision of the Council on the matters discussed at the hearing. If the majority protests of the registered voters or of the landowners only oppose

the furnishing of a specified type or types of improvements, equipment or services within the district, or against levying a specified special tax, those types of improvements, equipment or services, or the specified special tax shall be eliminated from the resolution of formation.

- (5) The City shall not record a notice of special tax lien against any parcel or parcels in the special tax district until such time as such parcel or parcels have been annexed to the district pursuant to an election as described in this section 61.2613(a), or the owner or owners of such parcel or parcels have given their unanimous written approval of such parcel or parcels' annexation to the special tax district, at which time the notice of special tax lien shall be recorded against such parcel or parcels as set forth in section 53328.3 of the *Act*.
- (b) Notwithstanding the provisions of section 53340 of the *Act*, after adoption of the resolution of formation for a special tax district described in this section 61.2613(a), the Council may, by ordinance, provide for the levy of the special taxes on parcels that will annex to the special tax district at the rate or rates to be approved at an election or by unanimous written approval of the owner or owners of each parcel or parcels to be annexed to the special tax district, and for apportionment and collection of the special taxes in the manner specified in the resolution of formation. No further

Council action shall be required even though no parcels may then have annexed to the special tax district.

- (c) Notwithstanding the provisions of section 53359 of the *Act* and section 61.2608, the City may bring an action to determine the validity of any special taxes levied pursuant to this Division and authorized pursuant to the procedures set forth in this section 61.2613 pursuant to Chapter 9 (commencing with section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil Procedure. Notwithstanding section 53359 of the *Act*, and section 61.2608, if an action is brought by an interested person pursuant to Code of Civil Procedure section 863 to determine the validity of any special taxes levied against a parcel pursuant to this Division and authorized pursuant to the procedures set forth in this section 61.2613, the action shall be brought pursuant to Chapter 9 (commencing with section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil Procedure, but shall, notwithstanding the time limits specified in Code of Civil Procedure section 860, be commenced within fifteen days after the date on which the notice of special tax lien is recorded against the parcel. Any appeal from a judgment in any action or proceeding described in this subdivision shall be commenced within thirty days after entry of judgment.
- (d) With respect to a special tax district formed pursuant to the alternate and independent procedure set forth in this section 61.2613, nothing in this section shall prohibit the City from obtaining the approval of the qualified

elector or qualified electors with respect to a particular parcel or parcels as to the annexation of such parcels to the special tax district, the applicable rate, method of apportionment and manner of collection of special tax, and the authorization to incur bonded indebtedness for the special tax district pursuant to any other procedure authorized by the *Act*.

**§61.2614      Alternate Procedure for Approving Issuance of Bonds**

- (a) As an alternate and independent procedure for conducting an election on the proposition to authorize bonded indebtedness for a special tax district formed pursuant to section 61.2613 and in lieu of the procedure set forth in sections 53353.5, 53354 and 53355 of the *Act*, the proposition to authorize bonded indebtedness may be approved by the owner or owners of the first parcel or parcels of property to be annexed at an election to be held at the time that such parcel or parcels are annexed to the special tax district and thereafter pursuant to the unanimous approval described in section 61.2613. No additional hearings or procedures are required, and such unanimous written approval shall be deemed to constitute a unanimous vote in favor of such proposition.
  
- (b) Notwithstanding the provisions of section 53359 of the *Act* and section 61.2608, the City may bring an action pursuant to Chapter 9 (commencing with section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds issued pursuant to this Division and authorized pursuant to the procedures set forth in this section 61.2614. Notwithstanding the provisions of

section 53359 of the *Act* and section 61.2608, if an action is brought by an interested person pursuant to Code of Civil Procedure section 863 to determine the validity of any bonds issued pursuant to this Division and authorized pursuant to the procedures set forth in this section 61.2614, the action shall be brought pursuant to Chapter 9 (commencing with section 860) of Division 5 of Title 10 of Part 2 of the Code of Civil Procedure, but shall, notwithstanding the time limits specified in Code of Civil Procedure section 860, be commenced within thirty days after the effective date of the resolution described in section 53351 of the *Act*. Any appeal from a judgment in any action or proceeding described in this subdivision shall be commenced within thirty days after entry of judgment.

- (c) With respect to a special tax district formed pursuant to section 61.2613, nothing in this section shall prohibit the City from obtaining the approval of the qualified electors with respect to a particular parcel or parcels as to the authorization to incur bonded indebtedness for the special tax district pursuant to any other procedure authorized pursuant to the *Act*.

**§61.2615 Improvement Areas**

In connection with formation of a special tax district and annexation of a parcel or parcels to the special tax district pursuant to the alternate and independent procedure set forth in section 61.2613 and the approval of the proposition to authorize bonded indebtedness pursuant to the alternate and independent

procedure set forth in section 61.2614, the City may, without additional hearings or procedures, designate a parcel or parcels as an improvement area within the special tax district. An improvement area shall be known as “Improvement Area No. \_\_\_\_\_ of the City of San Diego Renewable Energy, Energy Efficiency, and Water Conservation Improvement District No. \_\_\_\_\_.” After the designation of a parcel or parcels as an improvement area, all proceedings for approval of the rate, method of apportionment, manner of collection of special tax, and the authorization to incur bonded indebtedness for such parcel or parcels shall apply only to the improvement area.

**§61.2616 Refunding Bonds, Use of Savings**

Bonds may be issued under this Division to refund any outstanding special tax bonds or other indebtedness payable from special taxes, whether fixed lien bonds or any other improvement or special tax bonds, including ad valorem assessment or revenue bonds. Any savings achieved through the issuance of refunding bonds may be used by the City in any manner that it determines to further the purposes of this Division.

**§61.2617 Authority to Advance Funds**

Notwithstanding section 61.2391, in connection with the issuance of bonds pursuant to this Division, the Council may determine and may declare in the resolution authorizing the issuance of the bonds that it will obligate itself to advance available penalty and interest charges on delinquent special taxes in a special tax district to pay district obligations. Notwithstanding section 61.2392, the City in its sole discretion may determine whether funds in the Special

Assessment District Delinquency Fund as defined in that section may be expended on behalf of a special tax district formed under this Division.

**§61.2618 Division Controlling**

To the extent that the provisions of this Division are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this Division shall control.

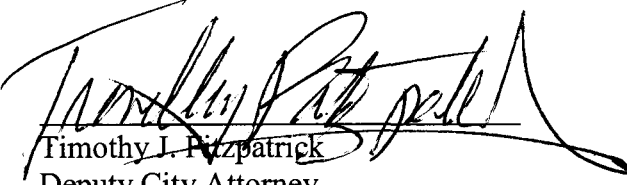
**§61. 2619 Compliance with this Division**

Any proceedings taken or special taxes levied pursuant to this Division shall not be held invalid for failure to comply with the provisions of this Division provided such failure is not a constitutional defect.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Timothy J. Fitzpatrick  
Deputy City Attorney

TJF:jdf:jab  
1/20/2010  
Or.Dept: City Attorney  
O- 2010-52  
MMS #11347

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 16.2010

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 2.26.10  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor